

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

FILED
OCT 17 2001

CLERK
U. S. DISTRICT COURT
MIDDLE DIST. OF ALA.

ROBERT HENDERSON,

Plaintiff,

VS.

THE TRAVELERS INSURANCE
COMPANY, et al.,

Defendants.

CIVIL ACTION NO. 01-S-176-N

MOTION TO DISMISS

COMES NOW the defendant referred to in the plaintiffs' Complaint as "The Travelers Insurance Company" (hereinafter referred to as "Travelers"), and moves the Court, pursuant to Rule 12 of the Alabama Rules of Civil Procedure, to dismiss the Complaint and as grounds therefor assigns the following:

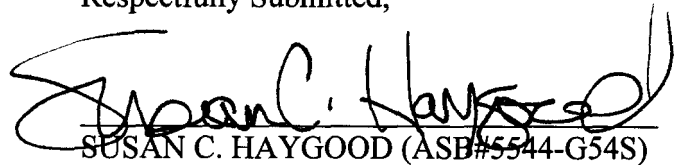
1. The Complaint fails to state a cause of action for which relief may be granted.
2. The insurance policy involved in the case at bar was issued to plaintiff by defendant Automobile Insurance Company of Hartford ("AICH").
3. Travelers did not issue the policy to the plaintiff. There is no evidence that Travelers had anything to do with the issuance of the policy. In fact, this Court ordered plaintiff to show cause as to why Travelers should not be dismissed from this action. The only cause plaintiff could show is that AICH is a division of Travelers and that the Travelers logo was on the cancellation acknowledgment from AICH. (See plaintiff's response attached as Exhibit "A"). Travelers' name was not on the cancellation notice nor was Travelers

even mentioned in the cancellation notice. Travelers had absolutely nothing to do with the cancellation notice, as it had nothing to do with the issuance of the policy. There is no evidence of any Travelers involvement with the policy at issue in this case.

4. This Court lacks jurisdiction of the subject matter of this action.
5. This Court lacks jurisdiction over this defendant.
6. Venue of this action is improper.
7. The case is barred by laches.
8. The case is barred by the statute of limitations.

NO ORAL ARGUMENT REQUESTED

Respectfully Submitted,



SUSAN C. HAYGOOD (ASB#5544-G54S)

Attorney for Defendant, Travelers

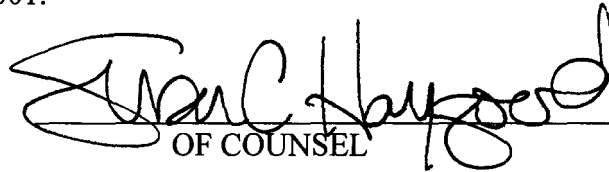
OF COUNSEL:
SMITH & ELY, L.L.P.
2000-A SouthBridge Parkway
Suite 405
Birmingham, Alabama 35209
(205) 802-2214

CERTIFICATE OF SERVICE

I do hereby certify that a true and accurate copy of the foregoing has been served on all parties of record by:

<u> </u>	Hand-delivery
<u> X </u>	U. S. Mail
<u> </u>	Overnight Delivery
<u> </u>	Facsimile

on this the 16 day of October, 2001.


OF COUNSEL

cc:

Mr. Michael Rountree
Rountree & Singleton
448 St. Luke's Drive
Montgomery, Alabama 36117

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

Robert Henderson,
Plaintiff,

vs.

The Travelers Insurance
Company, et al.,
Defendants

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Civil Action No. 01-S-176-N

RESPONSE TO ORDER OF THE COURT

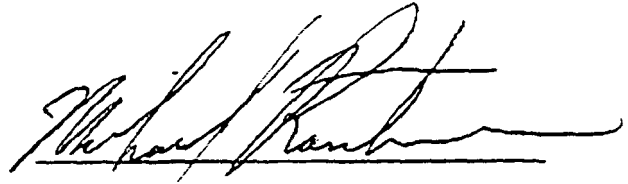
Comes now the Plaintiff and answers this order just now received by Counsel and states to the Court as follows:

1. That counsel was not aware that Travelers had not been served. In fact, counsel was under the mistaken opinion that service had been perfected by certified mail based on paperwork received from the Pike County Circuit Court dated 2/14/2000. (See Exhibit A)
2. The plaintiff believes that the Defendant Automobile Insurance Company of Hartford, Connecticut (hereinafter referred to as AICH) is a division of Travelers insurance or that Travelers was using AICH to broker their insurance and that the service provided to AICH was service to them as well in that they are the mirror image of Travelers in this contract. (See Exhibit B - The Cancellation Acknowledgment with Travelers logo)
3. Counsel for Plaintiff was not aware of the Motion made by Counsel for AICH to supplement their answer correcting their involvement as counsel for AICH instead of Travelers until this Court Notified us of the fact.
4. Counsel has talked to the Circuit Court of Pike County and the U.S. Postal Service about the Service issue by certified mail.
5. The Court has advised counsel for the Plaintiff that they do not have the green card in the file nor have they received the letter that was mailed on 2-14-2000 under Certified Receipt # Z361781800. The Court has no record of the letter being returned or service being refused.
6. The U.S. Postal Service is unable to trace the certified receipt on their computer system

due to the age of the mailing. However, the Postal Service stated that if the Circuit Court would release the receipt to them with the information contained on the receipt that it could be traced by sending it to the local Post Office in Georgia and them reviewing their records as to what happened and when.

7. Counsel for the Plaintiff will be glad to provide additional funds and/or paperwork to provide Travelers with notice in matter and to allow them time to answer and/or deny the claims made by the Plaintiff.

Done this the 7th day of August, 2001.



Michael Rountree (Rou009)

Of Counsel:

Rountree & Singleton, P.C.

448 Saints Lukes Drive

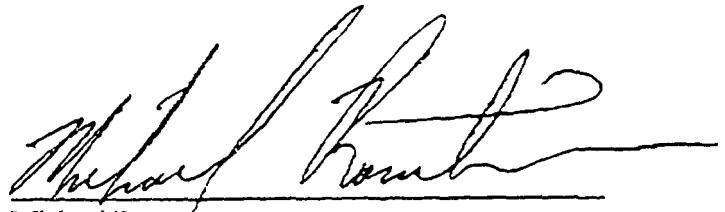
Montgomery, AL 36117

334-270-8291

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the foregoing Response to the parties listed below via first class mail and fax at Attn: Susan Haygood at 205-879-4445 as well as E-mailed to Shaygood@Smith-Ely.com.

Susan C. Haygood, Esquire
Smith & Ely, L.L.P.
2000-A South Bridge Parkway, Suite 405
Birmingham, AL. 35209



Michael Rountree

CANCELLATION ACKNOWLEDGEMENT

Exhibit B

**THE AUTOMOBILE INSURANCE COMPANY OF HARTFORD, CONNECTICUT
HARTFORD, CT 06183**

January 28, 1998

Robert Henderson
Rt 1 Box 218 A
Troy, AL 36081-

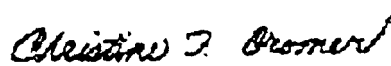
Re: 253-SZ0001983858-PCH

Policy Period: 12/03/97 to 06/03/98

Dear Policyholder:

Please be advised that the above Personal Automobile policy was processed for cancellation. The cancellation was effective as of 12:01 A.M. (Standard Time) on 12/03/97.

Reason for Cancellation: Non-Pay Cancellation



Authorized Representative

cc: Pinckard Agency Inc

Sandy Pederson